REMARKS

This Application has been carefully reviewed in light of the Office Action electronically mailed October 28, 2009. At the time of the Office Action, Claims 1-5, 7-10, 12-21, 23-26, 28-37, 39-42, and 44-60 were currently pending. Claims 1-5, 7-10, 12-21, 23-26, 28-37, 39-42, and 44-55 have been allowed. Claims 56-60 have been rejected. Applicants amend Claims 33-37, 39-42, 44-48, and 54-55. Applicants respectfully request reconsideration and allowance of all pending claims.

Allowed Claims

Applicants appreciate the Examiner's allowance of Claims 1-5, 7-10, 12-21, 23-26, 28-37, 39-42, and 44-55.

Section 101 Rejections

The Office Action provides conflicting statements with regard to what claims, if any, are rejected under 35 U.S.C. § 101. The Disposition of Claims in the Office Action Summary specifies that Claim 33 has been allowed, and the Office Action further states that the rejection of Claim 33 under 35 U.S.C. § 101 has been withdrawn. *See* Office Action Summary; *See* Office Action, page 2. However, the Office Action also states that the rejections under 35 U.S.C. § 101 with respect to Claims 33-37, 39-42, 44-48, and 54-55 have been maintained. Applicants respond under the assumption that the Office Action intended to maintain the rejection of Claims 33-37, 39-42, 44-48, and 54-55 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse these rejections.

Claim 33 recites a tangible program storage device and the Office Action states that the mere recitation of the word tangible in front of storage medium does not overcome a rejection under 35 U.S.C. § 101. *See* Office Action, page 3. According to the M.P.E.P., when functional descriptive material consisting of data structures and computer programs is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases. *See* M.P.E.P. § 2106.01. Because Claim 33 recites a tangible program storage device that includes computer

executable code, Applicants respectfully submit that Claim 33 is patentable under 35 U.S.C. § 101.

The Office Action also objects to Claim 33 for failing to provide an antecedent basis for the term storage medium in the specification. *See* Office Action, page 3. Applicants amend Claim 33 to recite a "program storage device" as suggested by the Examiner. Applicants respectfully request withdrawal of the rejections.

Claims 34-37, 39-42, 44-48, and 54-55 depend, either directly or indirectly, on Claim 33. Thus, for the reasons discussed with respect to Claim 33, Applicants respectfully submit that Claims 34-37, 39-42, 44-48, and 54-55 are patentable under 35 U.S.C. § 101. Applicants respectfully request that the rejections of Claims 33-37, 39-42, 44-48, and 54-55 be withdrawn.

Section 103 Rejections

The Office Action rejects Claims 56-60 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0123117 issued to Berger ("*Berger*") in view of U.S. Patent No. 7,539,664 issued to Dutta, et al. ("*Dutta*"). Applicants respectfully traverse these rejections.

Claim 56 recites adding the entry for the file to a database of known good software if the quantitative information exceeds a predetermined value. The Office Action states that *Berger* teaches adding an entry to a database of known good software if the quantitative information exceeds a predetermined value. *See* Office Action, pages 2, 4-5. *Berger* actually discloses monitoring an application in a sandbox to determine if the application is safe, and updating a local configuration to reflect that a potentially unsafe application is now a known safe application. *See Berger*, pars. [0074], [0081]. Thus, *Berger* uses the behavior of the application in a sandbox to decide if an application is safe, rather than comparing quantitative information with a predetermined value. The Office Action argues that *Berger* compares quantitative information with a predetermined value because *Berger* determines an application is safe if the amount of time spent in a sandbox is above a predetermined amount of time. *See* Office Action, pages 2-3. However, *Berger* never makes a determination that an

application is safe based on the amount of time spent in the sandbox. *Berger* monitors the application in the sandbox to determine if the application violates a set of defined rules. *See Berger*, par. [0075]. Thus, *Berger* fails to disclose adding the entry for the file to a database of known good software if the quantitative information exceeds a predetermined value.

Moreover, Claim 56 recites determining quantitative information regarding the file and adding the entry for the file to a database of known good software if the quantitative information exceeds a predetermined value. In rejecting Claim 56, the Office Action states that it would have been obvious to one of ordinary skill in the art to modify the computer security teachings of *Berger* to use the quantitative information taught in *Dutta*. *See* Office Action, page 5. However, this proposed *Berger-Dutta* combination is not obvious. *Berger* discloses updating a local configuration to reflect that a potentially unsafe application is now a known safe application, and *Dutta* discloses enhancing the search features of a peer-to-peer network by determining information regarding a file, such as the number of times the file was opened or executed, and using this information for rating the popularity of the file. *See Berger*, par. [0081]; *See Dutta*, col. 9, lines 34-49. The use of information regarding a file for rating the popularity of the file in *Dutta* bears no relation to computer security or detecting malicious software. The Office Action states the motivation for the combination would be to improve the malicious computer code detection of *Dutta*. *See* Office Action, page 5. However, *Dutta* relates only to improving performance of peer-to-peer file sharing networks. The portion of *Dutta* cited by the Office Action in reliance on this position discloses nothing about malicious computer code detection. *See Dutta*, col. 1, lines 5-10. Thus, Applicants respectfully submit that it would not have been obvious to one of ordinary skill in the art to combine the computer-security teachings of *Berger* to use the file information taught in *Dutta*.

Because the *Berger-Dutta* combination fails to disclose every element of Claim 56 and because there is no proper motivation to combine the references in the manner suggested, Applicants respectfully submit that Claim 56 is allowable over the cited art used in the rejections. Claims 57-60 depend, either directly or indirectly, on Claim 56. Thus, for at least the reasons discussed above with respect to Claim 56, Applicants respectfully request that the rejections of Claims 56-60 be withdrawn.

Conclusion

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicant respectfully requests full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

Although Applicant believes no fee is due, the Commissioner is hereby authorized to charge any required fee or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant

Chad C. Walters
Reg. No. 48,022
PHONE: (214) 953-6511

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CORRESPONDENCE ADDRESS:

Customer Number: **05073**